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E.O. 12958: DECL: 09/23/2018

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SUBJECT: ANC LAYS THE LEGAL FRAMEWORK FOR KGALEMA MOTLANTHE  
TO ASSUME PRESIDENCY

REF: PRETORIA 2096

Classified By: Political Counselor Raymond L. Brown. Reasons 1.4 (b) and (d).

¶1. (SBU) Parliament appears ready to formally nominate African National Congress (ANC) Deputy President and Minister in the Presidency Kgalema Motlanthe to replace President Thabo Mbeki on September 25. ANC National Chairperson Baleka Mbete, who is likely to become the Acting Deputy President, told reporters that Constitutional Court Chief Justice Pius Langa will be available to swear in Motlanthe so there will not be a gap in leadership. Although Mbete's September 22 remarks on how the constitutional process for replacing Mbeki may unfold are somewhat misleading, the ANC appears to have acted within the constitutional framework to replace Mbeki.

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The Constitutional Mechanics of Motlanthe Becoming President  
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¶2. (C) University of Western Cape professor, and South Africa's leading legal commentator, Pierre de Vos has written that the mechanics of Motlanthe becoming the country's acting leader are clear. When a President resigns or dies a vacancy occurs immediately in the office, and in terms of the Constitution, the Deputy President takes over on an acting basis until such time as the National Assembly can gather under the auspices of the Chief Justice to elect and install a new permanent President from among its members. If the Deputy President also resigns, the Cabinet must designate someone from among its members to act as President until a new President is elected by the National Assembly. According to de Vos, this provision is important because it ensures South Africa at all times has a commander-in-chief and that someone is automatically designated by the Constitution as an acting President until such time as the National Assembly has had time to elect a new leader. The election of a new President by the National Assembly must occur within 30 days after the resignation of Mbeki. If no leader is elected within 30 days, the Parliament is dissolved and a new election must be held within 90 days. The ANC has made it clear it wants to avoid such a scenario.

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The Rationale Behind the Motlanthe Pick  
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¶3. (C) De Vos has argued that the ANC is well aware of the constitutional guidelines, and probably gambled that Deputy President Phumzile Mlambo-Ngcuka would follow Mbeki in resigning or could be coerced to step down. (Note: Mlambo-Ngcuka resigned on September 23. End Note.) In choosing this option, Jacob Zuma's supporters under the guidelines of the Constitution chose its best option within the Cabinet by selecting Motlanthe -- the ANC Deputy President assumed a seat in the Cabinet following his appointment to Parliament in May 2008. De Vos argued that by abdicating the timing of his stepping down to the National Assembly, which Mbeki did in his resignation letter that was

read before Parliament this week by Mbete, the President's resignation and the election of Motlanthe can now be choreographed to ensure a new President is chosen on the same day the resignation becomes official. This provision, and the ANC's two-thirds majority in Parliament, allows the ruling party to insert the leader of its choice. The ANC could not choose Jacob Zuma as acting leader because the ANC could not choose Jacob Zuma as acting leader because the ANC President is not a member of the National Assembly.

Moreover, de Vos has written extensively how the Electoral Act would make it very difficult for Zuma to become a member of the National Assembly before the next election. Legally, Zuma cannot become President until the next election is held.

De Vos said that should Motlanthe be nominated as acting leader by the Cabinet but not confirmed by the National Assembly, elections would have to take place within 90 days, or in January 2009. (Note: From all indications this appears unlikely because the ANC and some within the opposition, including Democratic Alliance leader Helen Zille, are behind the selection of Motlanthe. End Note.)

14. (C) The ANC's National Chairperson on September 22 invoked a section of the Constitution that reads "At its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its members to be the president" to highlight the constitutional proceedings. The chairperson's use of this section, however, is somewhat misleading because the statement is meant to refer to an election of the president at the first sitting of the National Assembly after a general election. Pundits say Mbete may have highlighted this statement to prevent Mlambo-Ngcuka from becoming Acting President; however, there is no proof Mbete did so.

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Comment  
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15. (SBU) The ANC has followed the constitutional guidelines for replacing Mbeki, but Zuma's supporters clearly calculated at every step of the way to dictate how events unfold constitutionally. In this way, many commentators see the ANC as following the letter of the law but not necessarily its spirit.

BOST